

**MINUTES OF
FAIRFAX COUNTY PLANNING COMMISSION
WEDNESDAY, JULY 22, 2015**

PRESENT: Peter F. Murphy, Springfield District
Frank A. de la Fe, Hunter Mill District
John Ulfelder, Dranesville District
Earl L. Flanagan, Mount Vernon District
Ellen J. Hurley, Braddock District
John L. Litzenberger, Jr., Sully District
James R. Hart, Commissioner At-Large
Janyce N. Hedetniemi, Commissioner At-Large
Timothy J. Sargeant, Commissioner At-Large
Julie Strandlie, Mason District

ABSENT: Kenneth A. Lawrence, Providence District
James T. Migliaccio, Lee District

//

The meeting was called to order at 8:15 p.m., by Chairman Peter Murphy, in the Board Auditorium of the Fairfax County Government Center, 12000 Government Center Parkway, Fairfax, Virginia 22035.

//

COMMISSION MATTERS

SE 2015-MV-003 – FIRST YEARS LEARNING CENTER/CLAUDIA TRAMONTANA
(Decision Only) (The public hearing on this application was held on June 10, 2015)

(Start Verbatim Transcript)

Commissioner Flanagan: Mr. Chairman. I have a decision only tonight, SE 2015-MV-003 First Years Learning Center, and I request that the applicant, come forward to the lectern and confirm for the record, agreement to the proposed development conditions now dated July 21, 2015, with two changes – recent changes - to the conditions and with the inclusion of the following language to condition one, which restricts the special exception approval to the applicant only. Do you agree with the conditions?

Lawrence McClafferty, Applicant's Agent, McCandlish & Lillard, PC: Mr. Flanagan and Mr. Chairman and members of the Commission, we hereby agree with that additional condition.

Commissioner Flanagan: Thank you.

Chairman Murphy: Sir, identify yourself for the record please, just to make it –

Mr. McClafferty: Lawrence McClafferty, of McCandlish & Lillard, here on behalf of the applicant, First Years Learning Center, LLC and Claudia Tramontana.

Chairman Murphy: Thank you very much, Mr. Flanagan.

Commissioner Flanagan: The conditions, are we on – verbatim?

Chairman Murphy: Yes.

Commissioner Flanagan: - okay, the conditions, number one that I refer to, was passed out to all the Commissioners in the handouts so you should all have that text, I will repeat it here. But based upon public testimony not previously available to staff and the applicant's willingness to achieve neighborhood harmony by amending staff's conditions so as to improve pipestem traffic and parking by eventually reducing the number of children on the site from 12 to 9. Second, improve playground safety by adding play equipment ground cover and fencing as recommended by Commissioners Strandlie and Hedetniemi and limiting the SE to the applicant rather than the site, as we are doing this evening. I therefore Mr. Chairman, MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS APPROVAL OF SE 2015-MV-003, SUBJECT TO THE DEVELOPMENT CONDITIONS NOW DATED JULY 21, 2015.

Commissioner Litzenberger: Second.

Chairman Murphy: Seconded by Mr. Litzenberger.

Commissioner Sargeant: Mr. Chairman.

Chairman Murphy: Is there a discussion of the motion?

Commissioner Sargeant: Mr. Chairman.

Chairman Murphy: Mr. Sargeant.

Commissioner Sargeant: I was not present for the public hearing however, I have reviewed the information and also the video recording of the public testimony and I intend to vote.

Chairman Murphy: Further discussion of the motion? All those in favor of the motion to recommend to the Board of Supervisors that it approve SE 2015-MV-003, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

(The motion carried by a vote of 10-0. Commissioner Lawrence and Migliaccio absent from the meeting.)

(End Verbatim Transcript)

//

Commissioner Hart said the Environment Committee met tonight to discuss draft proffers for electric vehicle charging stations. He announced that the Committee scheduled two additional meetings for October 7th and 21st, 2015 at 7 p.m. in the Board Conference room with the agenda to be determined.

//

MINUTES APPROVAL FOR DECEMBER 2014 MINUTES

(Start Verbatim Transcript)

Commissioner Hart: I MOVE THAT THE COMMISSION APPROVE THE MINUTES FOR DECEMBER 3RD, 4TH, 10TH, AND 11TH, 2014.

Commissioner Ulfelder: Second.

Chairman Murphy: Seconded by Mr. Ulfelder. Is there a discussion of the motion? All those in favor of the motion to approve the minutes as articulated by Mr. Hart, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Ms. Strandlie abstains, she was not on the Planning Commission at the present time, you missed a lot of fascinating applications.

(The motion carried by a vote of 9-0-1. Commissioner Strandlie abstained. Commissioner Lawrence and Migliaccio absent from the meeting.)

(End Verbatim Transcript)

//

ZONING ORDINANCE AMENDMENT – DONATION DROP BOXES (Decision Only) (The public hearing was held on July 8, 2015)

Commissioner Hedetniemi advised that as a result of the public hearing, several questions and comments were brought up by the Planning Commission and citizens. She asked staff for a

response to those issues and when questioned by Chairman Murphy, indicated that this portion would not be on the verbatim.

Heath Eddy, Zoning Administration Division, Department of Planning and Zoning, said he had submitted his response in writing which had been distributed to the Planning Commissioners and made part of the record. Below were the questions and comments Mr. Eddy addressed:

Could the Zoning Ordinance require or allow signs that advertised to passers-by that a donation drop-off box was on a property when the box was not visible from the street?

Mr. Eddy said staff was not trying to block the view of the donation boxes within the property, just to minimize the visibility to residential neighbors. He added that since directional signs were technically allowed by right on a commercial property staff did not believe it was necessary to add it to the amendment.

Could donation drop-off boxes be prohibited within 100 yards of a park or residential development entrance?

Mr. Eddy stated that requiring a 100 yard setback when it was not required of other accessory structures on a commercial site would be unnecessary. He noted that the regulation as written already provided limits on the number of boxes, advertising on the boxes, and limited transitional screening adjacent to residential properties; therefore, staff did not recommend this request.

Could a provision be added that specifically states that a property owner may prohibit donation drop-off boxes to be located on their property?

Mr. Eddy stated that property owners already had the right to take action against anyone who leaves donation boxes without permission on their properties so it would not be necessary to add it to the regulation.

Could donation drop-off boxes be limited to non-profit charitable organizations as defined by the IRS?

Mr. Eddy stated that this issue was related to ownership; therefore, was not subject to zoning regulations. Staff believed that the County was not allowed to regulate ownership of the boxes. Mr. Eddy also noted that the Zoning Ordinance was for land use regulations; therefore, this would not be within the County's purview.

The Planning Commission requested that staff create an education plan to explain the new ordinance to property owners and civic groups.

In addition to a press release, staff proposed to create a web page featuring a summary of the adopted regulations along with information on how property owners could respond to violations. In addition, Department of Code Compliance staff would prepare an informational letter to advise property owners of a complaint received and how to get in contact with them if they need assistance enforcing compliance of the donation boxes on their property. Staff would also contact commercial business groups to inform them of the new regulations and what role they could have to encourage compliance.

Could the County address collection times, frequency and noise resulting from the trucks that service the donation boxes in the proposed amendment?

Mr. Eddy stated that donations were required to be stored in the donation drop-off boxes and if items were left outside of the box, which included donated items or trash, for more than 24 hours they would be removed by either the property owner or operator of the donation drop off box. With regard to comparing the boxes to dumpsters and their collection regulations, Mr. Eddy reported that the County recently made changes to its policy and Solid Waste had increased its enforcement to address locations where there have been complaints.

Could the amendment have a requirement that the property owner's or the Department of Code Compliance's phone number be added to the side of the donation drop-off box?

Staff cited concerns over the implication of an endorsement for the donation box by the property owner or the County and noted these boxes were meant to be temporary; therefore, this would require the organizations to change the contact information every time a box was moved to a different location.

Response to a discussion about allowing the donation drop-off boxes at some public schools prompting the question whether it would be required to be allowed at all schools?

Mr. Eddy said the proposed amendment was meant to govern the type of structure and location and does not prohibit public schools from having such a structure. Staff stated it would be up to the Fairfax County School Board to determine location on school property.

Commissioner Hedetniemi asked Mr. Eddy to further explain the issue about regulating collections for the donation drop-off boxes. He said the collection times were designed to be flexible due to the variety of locations and situations the boxes would be in. He noted a schedule would be dependent upon the amount of donations collected and that what would work for some areas may be too infrequent for others. Staff also did not want to put the Department of Code

Compliance in the situation of having to track the collections of these boxes. Mr. Eddy again referred to the proposed amendment which stated any items outside of the box was required to be picked up within 24 hours.

Commissioner Hurley asked staff to clarify whether permission would be required from the property owner prior to placing a box on a site. Mr. Eddy said the proposed amendment would not require a permission agreement; however, if a donation drop-off box was left without a property owner's consent they had the right to have it immediately removed.

Commissioner Flanagan referred to Provision E of the proposed amendment regarding materials of the donation boxes, noting that paint color was not restricted. Mr. Eddy explained that staff mainly wanted to address the issue of upkeep and not allow the boxes to go into a state of disrepair.

Commissioner Strandlie stated she was not present at the public hearing but she had reviewed the record and the video; therefore, she would participate in the decision. She noted her support and that of the Mason District Land Use Committee for this regulation.

Chairman Murphy noted the above questions and answers would be submitted for the record.

Commissioner Ulfelder referred to Question 10 from the memo dated July 22, 2015, regarding Donation Drop-Off Box Zoning Ordinance Amendment follow-up, which addressed the outreach to the community. He stated that it would be helpful as part of the outreach to contact the various donation box providers to advise them of the new regulations. Mr. Eddy agreed to add them to the list.

Chairman Murphy recognized Commissioner Hedetniemi for action on this case and she indicated that the following motion would be on verbatim.

(Start Verbatim Transcript)

//

Commissioner Hedetniemi: Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS APPROVAL OF THE PROPOSED ZONING ORDINANCE AMENDMENT FOR DONATION DROP OFF BOXES AS SET FORTH IN THE STAFF REPORT DATED JUNE 2ND, 2015.

Commissioner Litzenberger: Second.

Commissioner Flanagan: Second.

Chairman Murphy: Seconded by Mr. Litzenberger and Mr. Flanagan. Is there a discussion of the motion? All those in favor to recommend to the Board of Supervisors that it adopt the Zoning Ordinance Amendment regarding drop off boxes, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries. The chair abstains, I was not present for the public hearing and I did not have the opportunity to review the film or anything else.

(The motion carried by a vote of 9-0-1. Chairman Murphy abstained from the vote. Commissioners Lawrence and Migliaccio were absent from the meeting.)

//

ORDER OF THE AGENDA

Chairman Murphy called for the only public hearing listed on tonight's agenda.

//

SE 2015-HM-006 - METROPOLITAN WASHINGTON AIRPORTS
AUTHORITY (MWAA) AND THE VIRGINIA DEPARTMENT OF RAIL AND
PUBLIC TRANSPORTATION ON BEHALF OF THE WASHINGTON
METROPOLITAN AREA TRANSIT AUTHORITY – Appl. under Sect. 5-404 of
the Zoning Ordinance to permit electronically-powered regional rail transit
facilities. Located at 12530 Sunrise Valley Dr., Herndon, 20191, on approx.
22,550 sq. ft. of land zoned I-4. Tax Map 16-4 ((1)) 27 (pt.). (Concurrent with
2232-H15-7.

2232-H15-7 - METROPOLITAN WASHINGTON AIRPORTS AUTHORITY
(MWAA) AND THE VIRGINIA DEPARTMENT OF RAIL AND PUBLIC
TRANSPORTATION ON BEHALF OF THE WASHINGTON
METROPOLITAN AREA TRANSIT AUTHORITY – Appl. under Sects. 15.2-
2204 and 15.2-2232 of the Code of Virginia to permit electronically-powered
regional rail transit facilities. Located at 12530 Sunrise Valley Dr., Herndon,
20191, on approx. 22,550 sq. ft. of land zoned I-4. Tax Map 16-4 ((1)) 27 (pt.).
(Concurrent with SE 2015-HM-006.)

John McBride, Odin, Feldman & Pittleman, P.C., applicant's agent, reaffirmed the affidavit dated July 15, 2015.

Commissioner Hart disclosed that his law firm of Hart and Horan, P.C., had four cases where there were attorneys in Mr. McBride's firm representing adverse parties, but indicated that it

would not affect his ability to participate in this hearing. In addition, last November 2014, he taught a Virginia CLE seminar with another attorney in Mr. McBride's firm. They had no business nor financial relationship and are no longer teaching together; therefore, he indicated that it would not affect his ability to participate in this hearing.

Mary Ann Tsai, Zoning Evaluation Division, Department of Planning and Zoning, presented the staff report, a copy of which is in the date file. She noted that staff recommended approval of applications SE 2015-HM-006 AND 2232-H15-7.

Commissioner Litzenberger referred to page 1 of the Affidavit, which showed Edward Long, County Executive, as an agent to Title Owner of Tax Map No. 16-4((1))27 and questioned staff whether that was county owned property. Ms. Tsai affirmed and said the county owned the land that the parking garage was located on.

Mr. McBride added that the area in question was the side of the Herndon Monroe Bus Transfer Station which the County had owned for a number of years and felt it would work well as a metro entrance platform since it would take advantage of the investment the County already had.

Ms. Tsai clarified for Vice Chairman de la Fe that these applications were requesting approval for the southern entrance pavilion and the elevated pedestrian walkway only.

Chairman Murphy called for speakers to this application; there being none he also called for final questions or comments from staff or the Commission.

Vice Chairman de la Fe referred to an email and statement submitted by neighbor's that related to an "electronically powered station." He clarified that the term should be "electric powered" since it runs on electricity. Vice Chairman de la Fe added he wanted to clear up any confusion by stating this application was not for a cell phone tower.

Chairman Murphy closed the public hearing and recognized Vice Chairman de la Fe for action on this case.

(Start Verbatim Transcript)

//

Commissioner de la Fe: Thank you, Mr. Chairman - somewhere in here I have a motion or a series of motion - first of all, could the applicant's representative please confirm for the record that you are in agreement with the proposed development conditions dated July 8, 2015, please.

John McBride, Applicant's Agent, Odin, Feldman & Pittleman, P.C: I so confirm.

Commissioner de la Fe: Thank you very much. Mr. Chairman, I concur with staff's conclusion that the proposed electrically-powered regional rail transit facilities satisfy the criteria of location, character, and extent as specified in Section 15.2-2232 of the Code of Virginia as amended therefore, I MOVE THAT THE PLANNING COMMISSION FIND 2232-H15-7 SUBSTANTIALLY IN ACCORD WITH THE PROVISIONS OF THE ADOPTED COMPREHENSIVE PLAN.

Commissioner Hart: Second.

Chairman Murphy: Seconded by Mr. Hart. Is there a discussion of that motion? All those in favor of the motion to approve 2232-H15-7, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries, Mr. de la Fe.

Commissioner de la Fe: Mr. Chairman, I FURTHER MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS APPROVAL OF SE 2015-HM-006, SUBJECT TO THE PROPOSED DEVELOPMENT CONDITIONS DATED JULY 8, 2015.

Commissioner Hart: Second.

Chairman Murphy: Seconded by Mr. Hart. Discussion? All those in favor of the motion to recommend to the Board of Supervisors that it approve SE 2015-HM-006, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

(The motion carried by a vote of 10-0. Commissioner Lawrence and Migliaccio absent from the meeting.)

(End Verbatim Transcript)

//

The meeting was adjourned at 8:51 p.m.
Peter F. Murphy, Chairman
James R. Hart, Secretary

Audio and video recordings of this meeting are available at the Planning Commission Office,
12000 Government Center Parkway, Suite 330, Fairfax, Virginia 22035.

Minutes by: Teresa M. Wang

Approved on: October 21, 2015



John W. Cooper, Clerk
Fairfax County Planning Commission